



COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUB-COMMITTEE

Fifth Session

SUMMARY RECORD OF THE SIXTY-FIFTH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 July 1966, at 10.30 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. LACHS	(Poland)
<u>Members:</u>	Mr. RUDA	Argentina
	Sir Kenneth BAILEY	Australia
	Mr. HERNDL	Austria
	Mr. BAL	Belgium
	Mr. de CARVALHO SILOS	Brazil
	Mr. ANGELOV	Bulgaria
	Mr. GOTLIEB	Canada
	Mr. CERNIK	Czechoslovakia
	Mr. DELEAU	France
	Mr. PARTLI	Hungary
	Mr. Krishna RAO	India
	Mr. AZIMI	Iran
	Mr. VINCI	Italy
	Mr. YAMAZAKI	Japan
	Mr. CHAMMAS	Lebanon
	Mr. MACIAS	Mexico
	Mr. DASHTSEREN	Mongolia
	Mr. KAJDY	Poland
	Mr. GLASER	Romania
	Mr. KELLBERG	Sweden
	Mr. MOROZOV	Union of Soviet Socialist Republics
	Mr. KHALLAF	United Arab Republic
	Mr. DARWIN	United Kingdom of Great Britain and Northern Ireland
	Mr. GOLDBERG	United States of America

Representative of the International Atomic Energy Agency:

Mr. PISSAREV

Secretariat:

Mr. STAVROPOULOS

Representative of the
Secretary-General

Miss CHEN

Secretary of the Sub-Committee

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CONSIDERATION OF A TREATY GOVERNING THE EXPLORATION AND USE OF OUTER SPACE, THE
MOON AND OTHER CELESTIAL BODIES (A/AC.105/C.2/L.12, L.13) (continued)

Mr. GOTLIEB (Canada) said that he would like to revert to the discussion on article 4 of the United States draft treaty, which had no corresponding provision in the USSR draft treaty. Yet the concept of providing information to the Scientific Committee and to the Secretary-General was an important one. Both major space Powers had demonstrated a desire to close the gap between the two texts. The USA had enlarged the scope of its draft to embrace outer space as well as celestial bodies. The Soviet Union had now submitted a new proposal to cover the point dealt with in article 4 of the United States draft, and not covered in the Soviet draft treaty. That proposal coincided in part with the United States proposal; however, it appeared somewhat contradictory in that it seemed to stipulate an obligation and yet to provide for it to be carried out on a voluntary basis. At the same time, when taken as a whole, the Soviet draft treaty seemed to give recognition to the responsibility of the space Powers to explore and use outer space for the benefit of all. The representatives of the USSR had explained the relationship of that principle to other provisions. The preamble to the Soviet draft referred to the common interest of all mankind in the exploration and use of outer space and to the desire to contribute to international scientific co-operation. Article 1 specified the relationship between the exploration and use of outer space and the interests of mankind as a whole, and article VIII emphasized further that States were to be guided by the principle of co-operation in the exploration and use of outer space. Finally, article IX laid down that States were to regard astronauts as envoys of mankind. Whether or not that particular language was used, he thought it important to ensure that all parties to the treaty were in fact placed under specific treaty obligations to consider astronauts as envoys of the entire world, and accordingly to make information obtained by space exploration available to the entire scientific community.

The problem was to translate the general concept, which he welcomed in the Soviet draft, that space was to be explored for the benefit of all into concrete obligations. As had been pointed out, General Assembly resolution 1721 (XVI) had established a precedent with regard to reporting, although that resolution did not, of course, create a treaty obligation. His delegation hoped that the Committee could

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(Mr. Gotlieb, Canada)

agree on some specific areas of celestial activities in which there would be an obligation to make available to the entire world the results of scientific investigation.

Mr. RUDA (Argentina) said that his delegation supported the inclusion of the rule contained in article 4 of the United States draft because it reflected two principles which were basic to the Sub-Committee's work: firstly, the principle in paragraph 1 of General Assembly resolution 1962 (XVIII), laying down that the exploration and use of outer space was to be carried on for the benefit and in the interests of all mankind, and, secondly, the idea contained in both drafts before the Sub-Committee that outer space and celestial bodies must be used exclusively for peaceful purposes. It seemed logical that States should have an obligation to report on activities carried out for peaceful purposes and for the benefit of all mankind; otherwise two of the basic objectives of the treaty would be frustrated.

Mr. PARTLI (Hungary) said that his delegation welcomed article 4 of the United States draft, the purpose of which was to make the results obtained in space exploration available to the whole scientific community. However, that idea would have to be put into practice on a voluntary basis, as proposed in the USSR amendment. As he saw it, the non-obligatory character of the provision would be only relative, since States parties to the treaty would in any case be undertaking to explore space for the benefit of all. It would follow from that that the results of such exploration would be accessible to all. However, the publication of information should be at the discretion of the States which had made the greatest sacrifices to promote the exploration of space. Those States would be bound both by a moral obligation and by a contractual obligation under the treaty as a whole to publish scientific data, but the voluntary principle should be accepted, as it was in the case of the United Nations technical assistance programmes supported by voluntary contributions.

In practice, States which engaged in space exploration could make the results of their investigations available to the public even if there was no contractual obligation and the voluntary principle was preserved.

Mr. CHAMMAS (Lebanon) noted that the text proposed referred only to activities on celestial bodies. He did not know whether there would be complex technical problems involved in extending the scope of the treaty, but he thought

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(Mr. Chammas, Lebanon)

that the conclusion and implementation of an agreement on the question of liability would be facilitated if all information pertaining to activities either on celestial bodies or in outer space was transmitted to the Secretary-General. That practice would also be helpful from the point of view of assistance to astronauts.

Mr. DARWIN (United Kingdom) said that it seemed to him of great importance to include an effective article ensuring that information obtained in the course of space activities on celestial bodies benefited all mankind. Article 4 in the United States draft dealt with that point, and his delegation supported it. As to the new text submitted by the Soviet Union, its exact meaning was still not clear to his delegation. The Soviet representative had referred to General Assembly resolution 1721 (XVI), part B, where the words "on a voluntary basis" were used. But the purpose of that text, contained in a resolution which in any case constituted merely a recommendation, had been to provide for an exchange of such information as Governments might supply. In contrast, it was hard to see how the words "on a voluntary basis" could be reconciled with the words "will ...inform" in the Soviet text.

Since he was not clear as to the exact effect of the Soviet provision, he would not wish to take any position on it at the present stage.

Mr. VINCI (Italy) said that the practice provided for in clause (a) of article 4 of the United States draft had already been followed to some extent by the major space Powers, and by other space Powers including Italy, when they had registered their activities in outer space with the Secretary-General. The United States draft would provide for that practice in greater detail and make it binding.

Clause (b) of the United States draft provided an effective way of achieving the agreed objective that space activities should benefit all mankind. With regard to the Soviet text, he was afraid that to make the practice voluntary could make void the obligation to ensure that information which could be useful not only for scientific progress but also for improving life on earth was made available to all. His delegation therefore supported the United States draft.

Mr. de CARVALHO SILOS (Brazil) said that he preferred the United States text, for the same reasons as had been expressed by the representatives of Argentina, the United Kingdom and Italy.

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Mr. ANGELOV (Bulgaria) said that his delegation believed that article 4 of the United States draft was prompted by the desire to increase human knowledge about the earth, its environment and more particularly the celestial bodies. The desire was a noble one, since for the present and for an indefinite period only the space Powers would be able to carry out space exploration, all other States receiving the benefit of the results obtained. In that area, however, it was essential to determine what could be made the subject of a strict legal obligation. That was the problem raised by the Soviet draft amendment. It seemed obvious that, by its very nature, an exchange of scientific results could be carried out only on a voluntary basis and in a spirit of genuine international co-operation, as it already was, in fact, within the framework of COSPAR and similar international agencies. In his delegation's view, any legal obligation in the matter would impair the functioning of existing machinery and introduce extraneous elements. The disputes which might arise concerning the fulfilment or non-fulfilment of a legal obligation of that type could only hamper the free exchange of scientific knowledge.

What was essential, from the legal point of view, was to specify as clearly as possible that the exploration and use of outer space and of celestial bodies should be carried out for the benefit and in the interests of all countries. The Sub-Committee must ensure that no type of monopoly was introduced into that field. That idea could be stated more clearly still when the Sub-Committee later undertook the precise formulation of the first article.

Another major concern was that of ensuring that a State's exploration activities were not detrimental to other States and the international community as a whole. That was the purpose of article VIII of the Soviet draft and the Sub-Committee would have an opportunity to consider that aspect of the problem in due course. In his opinion, that would be an appropriate time to take into account the observations made by some members, including the representative of Japan, concerning the link between the provisions of article VIII of the Soviet draft and article 4 of the United States draft. He did not believe that there was any danger that article VIII might become ineffective merely because its authors could not accept the principle of a legal obligation to report on the results of exploration activities conducted on celestial bodies. As could be seen from the wording of article 4 of the United States draft, the reports in question were to be made after the activities had been carried out; they could therefore not be relevant to the essentially preventive purposes of article VIII of the USSR draft.

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Sir Kenneth BAILEY (Australia) said that the Australian delegation believed that the idea embodied in article 4 of the United States text, namely that there should be regular and obligatory reports on activities conducted on celestial bodies, was most valuable and a logical corollary to articles 2 and 3 of the United States draft which the Sub-Committee had accepted in principle in their revised form the previous day. Those articles provided not only for freedom of scientific investigation in outer space but for an obligation upon States to facilitate and encourage international co-operation in such investigation. Article 4 was therefore a natural corollary to that obligation in that it provided for making the findings of such activities available to the public and the international scientific community. There was no difference of objective between the United States text and the text which the Soviet Union had submitted that day. It was rather a difference of method, a difference between a specific obligation, as in the United States text, and a permissive provision, as in the USSR text. The Australian delegation, like those of Canada, Argentina, the United Kingdom and Italy, preferred an area of specific obligation in that field. In his delegation's view, an area of obligation should be maintained, even if, in order to obtain an agreement to it, it became necessary to narrow the area of the subject-matter to which the obligation was attached.

Mr. KASSEM (United Arab Republic) expressed his delegation's conviction that information on activities carried on in outer space should be provided by the space Powers on a voluntary basis. Such information should be submitted as soon as possible through the facilities provided by the United Nations. It should be as detailed as possible so that it could be of benefit to the public and the international scientific community. The Organization should be in a position to disseminate such information as soon as it was received.

He submitted the following amendment to article 4 of the United States text:

"States conducting activities in outer space and on celestial bodies shall, on a voluntary basis, inform the Secretary-General of the United Nations and also the public and the international scientific community of the nature, conduct and locations of such activities through the United Nations facilities.

"All information shall be promptly submitted, preferably in advance or at the carrying out of these activities, or immediately after.

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(Mr. Kassem, United Arab Republic)

"The United Nations should be prepared to disseminate this information immediately and effectively after receiving it, the said information to be ample and in detail for the benefit of the general public and the international scientific community."

Turning to article 1 of the draft treaty, he agreed that the general principles to be included in the text of the treaty should appear in that article. The most important concept it should stress was that the exploration and use of outer space should be on the basis of genuine co-operation among all States regardless of the level of their economic or scientific development.

His delegation also agreed that outer space should be the province of all mankind. The first paragraph of article I of the USSR draft, which provided that the exploration and use of outer space should be carried out for the benefit and in the interest of all countries, should be maintained in the text of article 1 and not transferred to the preamble to the treaty, as some delegation had suggested. Furthermore, that idea should be given concrete meaning and not remain merely the statement of a theoretical principle. The text should be amended to express clearly the intention of the contracting parties to enable non-space Powers to participate to the greatest possible extent in exploration activities and in the enjoyment of the benefits of the peaceful use of outer space. He therefore suggested the following amendment to paragraph 1 of article 1:

"The Parties to this Treaty recognize outer space as the province of mankind. To this end, the exploration and use of outer space shall be carried out for the benefit, betterment, and in the interest of all nations irrespective of the degree of their economic and scientific development. The Parties to the Treaty undertake to accord equal conditions to States engaged in the exploration of outer space undertake to accord and to provide possibilities to the non-space Powers to enable them to participate in and to draw benefit from the exploration and use of outer space with the aim of deriving practical benefits relating to their economic and social development."

Mr. Krishna RAO (India) said that since his delegation had originally expressed some doubt as to whether the first sentence of article I of the USSR draft should be transferred to the preamble or retained in the article, he wished

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to say that the arguments advanced by the representatives of the USSR and the United Arab Republic had been very convincing. On second thought, it would be preferable to retain the sentence in question in the article, since a large number of subsequent articles would be based on that introductory statement, and he therefore supported the proposal to that effect just made by the representative of the United Arab Republic.

The CHAIRMAN suggested that the Committee should proceed to discuss article IV of the USSR draft and articles 8 and 9 of the United States draft simultaneously since they deal essentially with the same subject.

Mr. GOLDBERG (United States of America) read out a suggested text to replace articles 8 and 9 of the United States draft. In the spirit of the discussion held in the Sub-Committee, his delegation believed that the treaty should incorporate the provisions of General Assembly resolution 1884 (XVIII), applied not only to celestial bodies but to outer space as a whole. Moreover, it thought that certain restrictions on military activities included in the Antarctic Treaty should be applied to activities on celestial bodies. Lastly, the United States delegation thought that the treaty should clearly state that celestial bodies should be used for peaceful purposes only.

The new text contained a provision similar to article I, paragraph 2, of the Antarctic Treaty, to the effect that the use of military personnel and equipment for scientific research or any other peaceful purpose should not be prohibited. As in the exploration of the Antarctic, man could not have penetrated outer space and survived in that hostile environment unless he had been able to draw upon the benefits of all research, civilian or military, involving both personnel and equipment. For any country engaging in space activity, military personnel, facilities and equipment played an indispensable role and would continue to be an essential part of future space programmes.

Some provisions in the new text and in other articles of the United States draft related only to celestial bodies. At the present stage of scientific research, some prohibitions were relevant only to celestial bodies and not to outer space as a whole. As the situation evolved, however, that problem could be reconsidered in the Legal Sub-Committee or in the Committee itself. Although the

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(Mr. Goldberg, United States)

United States had agreed to broaden the scope of the treaty in certain respects, it would not be practical or realistic to broaden the scope of every provision, irrespective of the subject matter. In addition, a practical consideration was involved: a treaty should be drafted on which there was a genuine prospect of agreement. Efforts should be concentrated on achieving what was possible and should not be abandoned because the ideal could not be achieved at once.

Mr. MOROZOV (Union of Soviet Socialist Republics) said that the new text just introduced by the United States representative differed little from article IV of the Soviet draft. There were certain drafting changes and one change which might prove to be substantive in nature.

The only difference between the first sentence of article IV and the first sentence of the new United States text was that the words "or other weapons of mass destruction" were replaced by the words "or any other kinds of weapons of mass destruction" and the words "or otherwise to station them in outer space" were replaced by the words "or station such weapons in outer space in any other manner". His delegation could accept those drafting changes.

The Soviet Union could not accept the second sentence in the new United States text. For the sake of consistency, it would be better to speak of "The moon and other celestial bodies" rather than "Celestial bodies". In addition, the wording of the second sentence of article IV of the Soviet text was more forceful; it spoke of the moon and other celestial bodies being used "exclusively for peaceful purposes", while the United States draft read "for peaceful purposes only".

So far as the third sentence in the two texts was concerned, the United States draft spoke of the "establishment of military bases and fortifications", while the Soviet draft referred to the "establishment of military bases and installations". If it was thought that fortifications were not covered by the term "installations", the Soviet Union would be prepared to agree to the addition of the words "and fortifications"; it could not, however, agree to the replacement of the word "installations" by the word "fortifications". The only other difference between the two sentences was that the United States draft mentioned "the testing of any type of weapons" and the Soviet draft referred to "the testing of weapons"; the Soviet Union could accept that change.

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(Mr. Morozov, USSR)

His delegation could accept the last sentence of the new United States text, if the words "and equipment" were deleted and the sentence read: "The use of military personnel for scientific research or any other peaceful purpose shall not be prohibited." If the use of military equipment in outer space was allowed, the essence of the treaty would be distorted and a loop-hole would be created for evading one of its most fundamental provisions. The provisions of the Antarctic Treaty could not be automatically applied to outer space, which was a completely new sphere of human activity.

Mr. CHAMMAS (Lebanon) said that the similarity between the United States and the Soviet Union texts was encouraging and that the remaining difficulties should not be insurmountable.

Mr. Krishna PAO (India) regretted that both texts omitted the concept of the use of outer space as well as the celestial bodies for peaceful purposes only. That idea, which had been broached by the space Powers in January 1957, when President Eisenhower had proposed the conclusion of an agreement on the subject, was very important for the non-space Powers. He appealed to the United States and the Soviet Union to reconsider their positions in that regard. If the principle that outer space should be used for peaceful purposes only was included in the treaty, it would always be possible to make provision for exceptions, as was already done in some draft articles.

In connexion with the last sentence of the United States text, he wondered how a situation could be envisaged in which military personnel could be used for one particular kind of scientific research but not for another kind.

The meeting rose at 1 p.m.